

DOCKET NO. 2003-408-C - ORDER NO. 2003-466

IN RE: Generic Proceeding to Define the Term) ORDER GRANTING
"Inflation-Based Index.") MOTION AND PETITION
)

With regard to the Motion to Withdraw, Sprint notes that, by Order No. 1999-140, this Commission approved Sprint's Proposed Administrative Guidelines pertaining to the filing and review of tariffs and reporting requirements filed June 5, 1998 (Exhibit B), and held that Sprint's "Proposed Administrative Guidelines filed June 5, 1998 shall, as of the date of this Order, supplement and constitute an amendment to the Applicant's (Sprint's) statutory Price Regulation Plan under S.C. Code Section 58-9-576(B)."

Page two of Exhibit B is entitled “Price Regulation Plan for United Telephone Company of the Carolinas.” The last sentence of the second unnumbered paragraph in section one thereto provides as follows: “Accordingly, for the United Plan, the provisions

of the S.C. Code Section 58-9-576(B)(3) and (4) are hereby waived by the Commission.”

Thus, Sprint states that it was exempted from the operation of these sections of the Code because Sprint meets the definition of a “small local exchange carrier” or “small LEC” as described in S.C. Code Section 58-9-10 (14) and 47 USC Section 153 (37) under the Communications Act of 1934, as amended. Therefore, according to Sprint, any Commission Order issued in Docket No. 2002-408-C regarding the definition of the term “inflation-based index” will not be applicable to Sprint.

Sprint further notes that since the provisions of S.C. Code Ann. Section 58-9-576(B)(3) and (4) are waived as to Sprint, and since Docket No. 2002-408-C pertains to the inflation-based index which is in part the subject of these statutory provisions, Sprint is not a proper party, and, accordingly, Sprint should be removed as a party from this docket.

With regard to the Petition for Declaratory Order, Sprint notes that, in response to its Motion to Withdraw, the Consumer Advocate filed a letter with the Commission stating that the statutory provisions in S.C. Code Ann. Section 58-9-576(B)(3) and (4) exempt small LECs whose prices are below the statewide average local service rate, weighted by the number of access lines. The letter went on to state that, to the extent Sprint or any other small LEC operating under a 576 plan has, or raises its rates to or above the statewide average, the provisions of sections (B)(3) and (4) will then apply, including the rate freeze and the inflation-based index. The Consumer Advocate also presented additional arguments in a letter dated July 9, 2003.

Sprint, however, takes the position that the exemptions contained in the statutory sections are applicable to a small LEC operating pursuant to a Commission approved price-regulation plan, and that they continue to apply regardless of changes in the rates charged by the LEC. Sprint states that its position is consistent with the express statutory language set forth under the Code section. Pursuant to Commission Regulation 103-836(2), Sprint requests that this Commission issue an order declaring that once an exemption is granted under S.C. Ann. Section 58-9-576(B)(3) and (4) at the time of the election of price regulation by a small LEC, the exemption continues throughout the duration of the price regulation plan. Upon review of the statutory sections, we agree with Sprint.

The operation of S.C. Code Ann. Section 58-9-576(B)(3) contemplates that its requirements apply on the date of election. This Code section states, when referring to this exemption, that "...small LECs whose prices are below the statewide average local service rate, weighted by number of access lines, the commission shall waive the requirements of this paragraph." The language of these subsections taken together indicates the intent of the South Carolina General Assembly to provide an exemption to small carriers whose rates are below the statewide average at the time of election. The express terms of S.C. Code Ann. Sections 58-9-576 (B)(3) and (4) provide that once a small LEC has been given an exemption, and is granted status as a small LEC, the exemption existing as of the election of price regulation remains in effect during the duration of the plan. Under these Code sections the Commission has no need to look for or impose another meaning.


S.C. Code Ann. Section 58-9-576 (B)(4) specifically sets forth that “[f]or those companies to which item (3) applies, after the expiration of the period set forth above, the rates for flat-rate local exchange residential and single-line business service provided by a LEC may be adjusted on an annual basis pursuant to an inflation-based index.” This language is clear and unambiguous and expressly applies to those companies that fall under the requirements set forth in S.C. Code Ann. Section 58-9-576(B)(3). Sprint is exempt from the requirements of subsections (B)(3) and (4) because, on the date of its election for price regulation, Sprint was a small LEC operating in the State of South Carolina with rates below the statewide average.

We would note, however, that Sprint is not free of regulation pursuant to our holding. Order No. 1999-140 described Section 3 of Sprint’s (United’s) Plan as offering substance and detail to the otherwise undefined “complaint process” referred to in S.C. Code Section 58-9-576(B)(5). Sprint’s (United’s) tariff filings and other actions taken by the Company under price regulation are subject to review by the Commission under the complaint process to comply with the public interest standard. Order No. 1999-140 at 8. Accordingly, Sprint’s (United’s) Plan was stated to include adequate provisions to ensure that any tariff filings or other actions taken by United under price regulation are consistent with the public interest. Id. We would note that we are free as a Commission on our own Motion or in response to a Petition from any interested party, to investigate whether a proposed tariff is in the public interest.

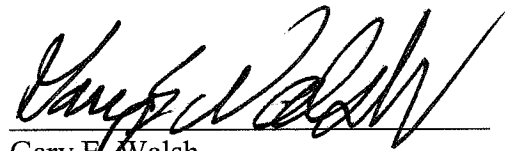
Accordingly, the Petition for Declaratory Order is granted and the requested Order is hereby issued. Also, Sprint's Motion to Withdraw as a party to the "inflation-based index" docket is hereby granted.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn
Chairman

ATTEST:


Gary E. Walsh
Executive Director

(SEAL)